



New Jersey Office  
1719 Route 10 East  
Suite 106  
Parsippany, NJ 07054  
T. (973) 898-1177  
F. (973) 898-1230

New York Office  
26 Whittier Road  
Blauvelt, NY 10913  
Please respond to NJ Office

August 20, 2019

Via ECF

Honorable I. Leo Glasser  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Chambers 921S  
Brooklyn, NY 11201

Alan R. Ackerman, Esq.  
Counsellor at Law  
araesq@alanackermanlaw.com  
Admitted NJ, NJ District Court  
3rd Cir. Court of Appeals

Steven A. Jayson, Esq.  
sjayson@alanackermanlaw.com  
Admitted NJ, NY  
NJ District Court, EDNY, SDNY

**Re: *Kashmir Gill v. Jus Broadcasting Corp., et al.***  
***Case No. 1:19-cv-04216 (ILG) (PK)***

Dear Judge Glasser:

I correspond with you concerning the *Ex Parte* Order which Your Honor entered yesterday [Docket Entry 34] based upon Mr. Batista's correspondence of August 16, 2019, forwarded to me while I was away on vacation last week. Your Honor entered the Order before I had a chance to respond to Mr. Batista's letter. Mr. Batista's correspondence does not accurately delineate the factual history of this matter, omits salient information and includes incorrect statements.

Before addressing his correspondence, it is important for the Court to review the docket in this matter because it addresses Mr. Batista's incorrect statements.

On April 25, 2019, Defendants filed their Fed. R. Civ. P. 12(b) Motions [Docket Entry 10]. The hearing was held before Judge Wolfson who entered an Order on July 19, 2019 [Docket Entries 22 and 23]. Judge Wolfson **denied Defendants' R.12(b) Motion to dismiss for lack of jurisdiction**. She then Ordered the matter be transferred to the Eastern District of New York. After the matter was transferred, Magistrate Judge Peggy Kuo denied, without prejudice, Defendants' Motion for Mr. Batista to appear *pro hac vice* [Docket Entry 25]. Mr. Batista was not substituted as counsel of record until August 7, 2019 [Docket Entry 29].

Before being substituted as Defendants' counsel, Mr. Batista corresponded with me on August 1, 2019. His claim that I did not respond to him is incorrect. I immediately responded to Mr. Batista's August 1<sup>st</sup> correspondence, which I received via e-mail. Therein, I advised, via email, "It appears that you are no longer attorney of record" referencing Docket Entry 25. The balance of the extensive e-mail requested that he discuss settlement with his clients before the parties expend large sums in legal fees. He did not respond.

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On August 6, 2019, I received Mr. Batista's second letter via e-mail. I attach my e-mail response to him as Exhibit "A." I again reminded him that he cannot demand anything because he is not counsel of record. I did not believe that I needed to remind Mr. Batista that Defendants waived their right to request a second Rule 12(b) Motion to dismiss. I received no further correspondence from Mr. Batista.

His correspondence of August 16, 2019 to the Court incorrectly claims that I did not respond to him and his request for me to consent to his briefing schedule. He then fails to state that his Fed. R. Civ. P. 12(b) Motion to dismiss was denied by Judge Wolfson. Instead, he states that the Motion ". . . was effectively granted by Judge Wolfson on July 19, 2019 when the Court Ordered the case transferred in its entirety to the Eastern District of New York, . . ." That statement is incorrect. Judge Wolfson specifically denied the Rule 12 Motion.

Now, Mr. Batista petitions this Court for a second bite at the apple, by requesting a briefing schedule to file a Fed. R. Civ. P. 12(b)(6) Motion to dismiss. Defendants cannot file a second Rule 12(b) Motion to dismiss. I am sure if the Court had known that the first Fed. R. Civ. P. 12(b)(6) Motion was denied by Judge Wolfson on July 19, 2019, it would not have entered this Order.

Fed. R. Civ. P. 12(h)(2) allows a Fed. R. Civ. P. 12(b)(6) claim to be raised as any defense and in any pleadings as allowed by Rule 7 or at trial.

Candidly, Plaintiff wants Defendants to file an Answer so that this matter can proceed. Defendants wish to file a Fed. R. Civ. P. 12(b)(6) Motion before filing its Answer, which is not countenanced by the Federal Rules of Civil Procedure. I am requesting that this Court revisit its Order of August 19, 2019 and require Defendants to either file an answer within a defined period of time or default will be entered,

Respectfully submitted,

LAW OFFICES OF ALAN R. ACKERMAN

  
BY: ALAN R. ACKERMAN, ESQ.

ARA/bc  
Enclosure

cc: Kashmir Gill  
Magistrate Judge Peggy Kuo  
Paul Batista, Esq.

EXHIBIT “A”

**Alan R. Ackerman**

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**From:** Alan R. Ackerman  
**Sent:** Tuesday, August 6, 2019 2:07 PM  
**To:** 'batista007@aol.com'  
**Subject:** Gill v. Jus Punjabi  
**Attachments:** Alan R. Ackerman, Esq..pdf

I shall assume that my last email fell on deaf ears. Pursuant to docket entry 28, you are not in the case. Is there another order that I have overlooked? I realize that you are listed on the docket, but your entry into the case was denied. I will call the clerk and find out what's going on, but all of the issues be resolved before we spend any more time on this case.

Alan R. Ackerman, Esq.  
LAW OFFICES OF ALAN R. ACKERMAN  
1719 Route 10 East, Suite 106  
Parsippany, NJ 07054  
(973) 898-1177 Office  
(973) 898-1230 Facsimile

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**From:** batista007@aol.com [mailto:batista007@aol.com]  
**Sent:** Tuesday, August 6, 2019 1:42 PM  
**To:** Alan R. Ackerman <araesq@alanackermanlaw.com>  
**Subject:** Gill v. Jus Punjabi